

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care and Child Foster Care
Licenses of Ana Marie Buck (Bennett)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on July 29, 2016. The hearing was held at the Olmsted County Government Center in Rochester, Minnesota. The hearing record closed on July 29, 2016 at the conclusion of the hearing.

Debra A. Groehler, Assistant Olmsted County Attorney, appeared on behalf of the Minnesota Department of Human Services and the Olmsted County Human Services Department (Department or County). Ana Buck appeared on her own behalf without counsel.

STATEMENT OF THE ISSUES

Did the Department properly revoke Ms. Buck's family child care and foster care licenses for failure to comply with applicable rules and laws?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that Ms. Buck's serial and serious failures to comply with applicable licensing requirements support revocation of her family child care and foster care licenses.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ana Buck is licensed to provide family child care and child foster care. Ms. Buck operates a daycare at her home in Chatfield, Minnesota.¹
2. Ms. Buck is the only staff member at her daycare home.²

¹ Exhibits (Exs.) 81, 87; Testimony (Test.) of Charlene Beavers; Test. of Rebecca Sprenger.

² See Test. of Ana Buck.

Foster Care License

3. On March 25, 2014, the County issued Ms. Buck a Correction Order indicating, among other violations, that she lacked 5.5 hours of required training for calendar year 2013.³

4. On January 8, 2015, the County notified Ms. Buck that she still needed to complete the 5.5 hours of required training for 2013. In addition, the County informed Ms. Buck that she would need to complete an additional 12 hours of training for calendar year 2014 before her foster care license could be renewed in February 2015.⁴

5. On March 17, 2015, the County issued Ms. Buck a Correction Order for failing to complete the 5.5 hours of required training for calendar year 2013 (as stated in the March 25, 2014 Correction Order) and failing to complete 12 additional hours of required training for calendar year 2014.⁵

Child Care License

6. On April 17, 2015, the County issued a Correction Order indicating that: (1) Ms. Buck had failed to complete 3.5 hours of required training; (2) the electrical outlets in her home were not covered; and (3) required enrollment forms for the children under her care were missing or incomplete.⁶

7. On June 25, 2015, the County issued a Correction Order stating that Ms. Buck had failed to cure the defects listed on the April 17, 2015 Correction Order and requesting a fire inspection for her home. The County further directed Ms. Buck to post “[a]ll correction orders ... in a place that is conspicuous to the people receiving your services (near your license) for two years. If the corrections are not completed by July 6, 2015, Olmsted County will recommend a negative licensing action.”⁷

8. On July 6, 2015, the County issued another Correction Order, stating that Ms. Buck’s cardiopulmonary resuscitation (CPR), first aid, Sudden Unexpected Infant Death (SUID), and Abusive Head Trauma (AHT) training were all past due. The Correction Order further indicated that the recently-issued Correction Orders were not posted conspicuously within Ms. Buck’s daycare.⁸

9. On July 13, 2015, the County recommended a negative licensing action against Ms. Buck’s child care license for “failure to comply with Correction Orders and training requirements.”⁹

³ Ex. 55; *see also* Minn. R. 2960.3070, subp. 2 (2015).

⁴ Ex. 64.

⁵ *See* Ex. 88 at 10.

⁶ Ex. 68.

⁷ Exs. 69-70.

⁸ Ex. 71.

⁹ Ex. 74.

10. The County recommended that the Department issue a fine to Ms. Buck and place her license on conditional status for two years.¹⁰

11. On August 18, 2015, Rebecca Sprenger, a child care licenser with Olmsted County, sent Ms. Buck a letter stating that she had tried to reach Ms. Buck “on separate dates, both by phone and e-mail without any success.” Ms. Sprenger indicated that if she did not hear from Ms. Buck by August 24, 2015, Sprenger might recommend that the Department revoke Ms. Buck’s family child care license.¹¹

12. On December 21, 2015, Ms. Sprenger, along with Olmsted County child care licenser Dawn Schenk, conducted an unannounced visit of Ms. Buck’s daycare. During the inspection visit, Ms. Sprenger and Ms. Schenk noted numerous licensing violations, including the ongoing noncompliance with required training. They noted that Ms. Buck was “short training for both 2014 and 2015” and was “still not current on her CPR and First Aid.” Moreover, the inspectors reported that:

Ana had difficulty finding the children’s forms, was unable to produce crib [safety inspection] sheets, fire/storm drill documentation, emergency numbers for parents/children and did not have a current, up-to-date provider policy in place.¹²

13. The County issued a Correction Order on December 30, 2015, listing these violations.¹³

14. On the same date, the County recommended revocation of Ms. Buck’s child-care license.¹⁴

15. Ms. Buck requested reconsideration of the December 30, 2015 Correction Order.¹⁵

16. By way of a letter dated March 30, 2016, the Department rescinded one violation, relating to a claimed violation of the safe sleep protocol for infants. The Department affirmed the remaining violations.¹⁶

17. Overall, Ms. Buck’s family child care facility has received ten correction orders since 2006 - many involving important health and safety protections.¹⁷

18. Similarly, Ms. Buck’s foster care has received six correction orders since 2007 - also involving key health and safety protections.¹⁸

¹⁰ Exs. 72, 73.

¹¹ Ex. 75.

¹² Ex. 76.

¹³ Exs. 76, 77, 79.

¹⁴ Ex. 80.

¹⁵ Ex. 83.

¹⁶ Ex. 86.

¹⁷ Exs. 6, 32, 35, 42, 43, 52, 68, 70, 71, 79.

19. On April 15, 2016, the Department revoked Ms. Buck's family child care and foster care licenses.¹⁹

20. Ms. Buck appealed the revocation, and the Department issued a Notice and Order for Prehearing Conference and Hearing.²⁰

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Department of Human Services (Commissioner) have jurisdiction over this matter under Minn. Stat. §§ 14.50, 245A.08 (2016).

2. The Department gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. Ms. Buck's appeal of the Order of Revocation was timely, and this matter is properly before the Commissioner and the Administrative Law Judge.

5. The Commissioner may suspend or revoke the license of a licensed provider who does not fully comply with applicable law or rule.²¹ When considering what, if any, sanctions are appropriate "the [C]ommissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program."²²

6. In this proceeding, the Department has the burden to demonstrate that reasonable cause existed for the revocation of the Licensee's family child care license, as provided in Minn. Stat. § 245A.08, subd. 3. If the Department makes that showing, the burden of proof shifts to the licensee to demonstrate by a preponderance of the evidence that she was in full compliance with the laws and rules that the Commissioner alleges were violated.

7. The Department may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that Licensee failed to comply fully with applicable law or rule.²³

¹⁸ Exs. 13, 20, 27, 37, 55, 88.

¹⁹ Ex. 88.

²⁰ NOTICE AND ORDER FOR PREHEARING CONFERENCE AND HEARING (Apr. 29, 2016).

²¹ Minn. Stat. § 245A.07, subd. 1 (2016).

²² *Id.*

²³ Minn. Stat. § 245A.08, subd. 3.

8. By failing to resolve the violations cited in the Correction Orders issued in 2014, 2015 and 2016, Ms. Buck did not meet the requirements of Minn. Stat. § 245A.06, subd. 3 (2016).

9. By failing to post correction orders so that they were “conspicuous to the people receiving services and all visitors to the facility,” Ms. Buck did not meet the requirements of Minn. Stat. § 245A.06, subd. 8 (2016).

10. All foster parents “must complete a minimum of 12 hours of training per year in one or more” specified areas or in other areas as agreed upon by the licensing agency and the foster parent.²⁴

11. “When children are present in a family child care home governed by Minnesota Rules, parts 9502.0315 to 9502.0445, at least one staff person must be present in the home who has been trained in first aid. . . . First aid training must be repeated every two years.”²⁵

12. “When children are present in a family child care home governed by Minnesota Rules, parts 9502.0315 to 9502.0445, at least one caregiver must be present in the home who has been trained in cardiopulmonary resuscitation (CPR), including CPR techniques for infants and children, and in the treatment of obstructed airways. The CPR training must have been provided by an individual approved to provide CPR instruction, must be repeated at least once every two years, and must be documented in the caregiver’s records.”²⁶

13. A daycare licensee is required to complete SUID and AHT training “at least once every two years.”²⁷

14. “For purposes of family and group family child care, the license holder and each primary caregiver must complete 16 hours of ongoing training each year.”²⁸

15. Ms. Buck is not in compliance with the statutory training requirements.

16. The Department demonstrated reasonable cause to believe that Ms. Buck violated statutes and rules governing her family child care and foster care facilities, that these violations occurred frequently, and the potential impacts of those lapses on the health, safety, and rights of children served by the programs.

17. Ms. Buck failed to establish that she was in full compliance with the laws and rules that the Department alleges she violated at the time the Department alleges that the violations occurred.

²⁴ Minn. R. 2960.3070, subp. 2.

²⁵ Minn. Stat. § 245A.50, subd. 3 (2016).

²⁶ *Id.* at subd. 4 (2016).

²⁷ *Id.* at subd. 5 (2016).

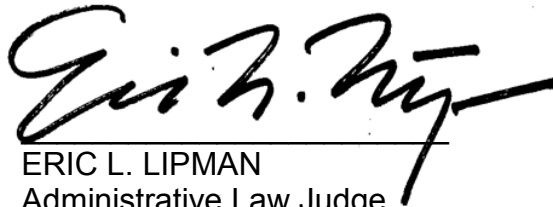
²⁸ *Id.* at subd. 7 (2016).

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner **AFFIRM** the revocation of Ms. Buck's family child care and foster care licenses.

Dated: August 25, 2016


ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions of Law, and Recommendation. Under Minn. Stat. § 14.61 (2016), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64254, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2016). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1 (2016), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Department alleges that Ms. Buck has failed to complete required training; comply with crib safety rules; maintain admission and arrangement forms for all children receiving daycare; and post information about these violations in ways that would be accessible to her clients.²⁹

Ms. Buck maintains that licensing officials present an unfair picture of her daycare and foster care home. She points out that her clients regard her caregiving services to be of a very high quality and that the services she provides to local families to be needed and valuable.³⁰ Moreover, Ms. Buck maintains that because of her difficult family circumstances - specifically the demands of caring for a special-needs child,³¹ no available transportation during the evening hours,³² and limited public access to the internet³³ - she has not been able to access training opportunities outside of the hours she is providing care.³⁴

While accessing the needed training hours is undoubtedly challenging in many parts of Minnesota, providers must have the skills to intervene if there is an emergency and be up-to-date on the practices needed to keep children safe from injury. Because of the important health and safety interests involved, Ms. Buck was obliged to find a way to sort out her access and scheduling problems.

In this respect, County officials were very patient, letting serious lapses in training go from year to year, without being satisfactorily resolved.³⁵

Likewise important, the other violations noted by licensing officials - most particularly the disorganized state of child enrollment packets, the absence of a current fire safety inspection and the absence of required emergency planning - all emphasize the very same theme: If catastrophe were to strike the daycare home, Ms. Buck might not be equipped to intervene appropriately and shield children from harm. These serious doubts cannot be dismissed.

The Commissioner may suspend or revoke the license of a licensed child care provider who does not fully comply with applicable law or rule.³⁶ When doing so, "the [C]ommissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program."³⁷

²⁹ See, e.g., Exs. 76, 88.

³⁰ Exs. A, B, C, D, E, F, G, H, I, K.

³¹ Test. of A. Buck.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See Exs. 5, 10, 14, 22, 28, 31, 43, 48, 55, 64.

³⁶ Minn. Stat. § 245A.07, subd. 1.

³⁷ *Id.*

Because of the chronicity of the violations, and the effect of those violations on the health, safety, and rights of persons served by the program, revocation of Ms. Buck's family child care and foster care licenses is the right result. The Administrative Law Judge therefore respectfully recommends that the Order of Revocation be affirmed.

E. L. L.